

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

BAD RIVER BAND OF THE LAKE
SUPERIOR TRIBE OF CHIPPEWA
INDIANS OF THE BAD RIVER
RESERVATION,

Plaintiff,

v.

ENBRIDGE ENERGY COMPANY, INC.,
and ENBRIDGE ENERGY, L.P.,

Defendants.

Case No. 3:19-cv-00602-wmc

Judge William M. Conley
Magistrate Judge Stephen L. Crocker

ENBRIDGE ENERGY COMPANY, INC.,
and ENBRIDGE ENERGY, L.P.,

Counter-Plaintiffs,

v.

BAD RIVER BAND OF THE LAKE
SUPERIOR TRIBE OF CHIPPEWA
INDIANS OF THE BAD RIVER
RESERVATION and NAOMI TILLISON,
in her official capacity,

Counter-Defendants.

JOINT STATUS REPORT REGARDING MEANDER CONDITIONS

Plaintiff and Defendants (collectively, the “Parties”) jointly submit this status report, and state the following:

The Parties submit this status report to apprise the Court of conditions at the Bad River meander (the “Meander”). The facts contained herein are accurate as of Friday, April 28, 2023. The Parties will provide updates to the Court as warranted.

Under current conditions known to the Parties, neither Enbridge’s current Monitoring, Shutdown, and Purge Plan (the “Plan” filed at Dkt. 616-1) nor Enbridge’s proposed plan (Dkt. 616-2), nor the Band’s most recent proposed plan (Dkt. 617) requires a shutdown or purge at this time. Enbridge represents that it has kept PHMSA informed of the conditions at the Meander.

Enbridge represents that, in advance of the Spring flooding season, it installed 21 new monuments in addition to the 14 original monuments that were already installed, as well as additional cameras in the area.

The Bad River overtopped its banks at the Meander the past two weekends. *See Figure 1*, below.

Figure 1. Bad River Inundation of Meander Neck, April 14, 2023 (View East).



(Source: Enbridge drone photograph, taken 4/14/23, file DJI_0373.JPG)

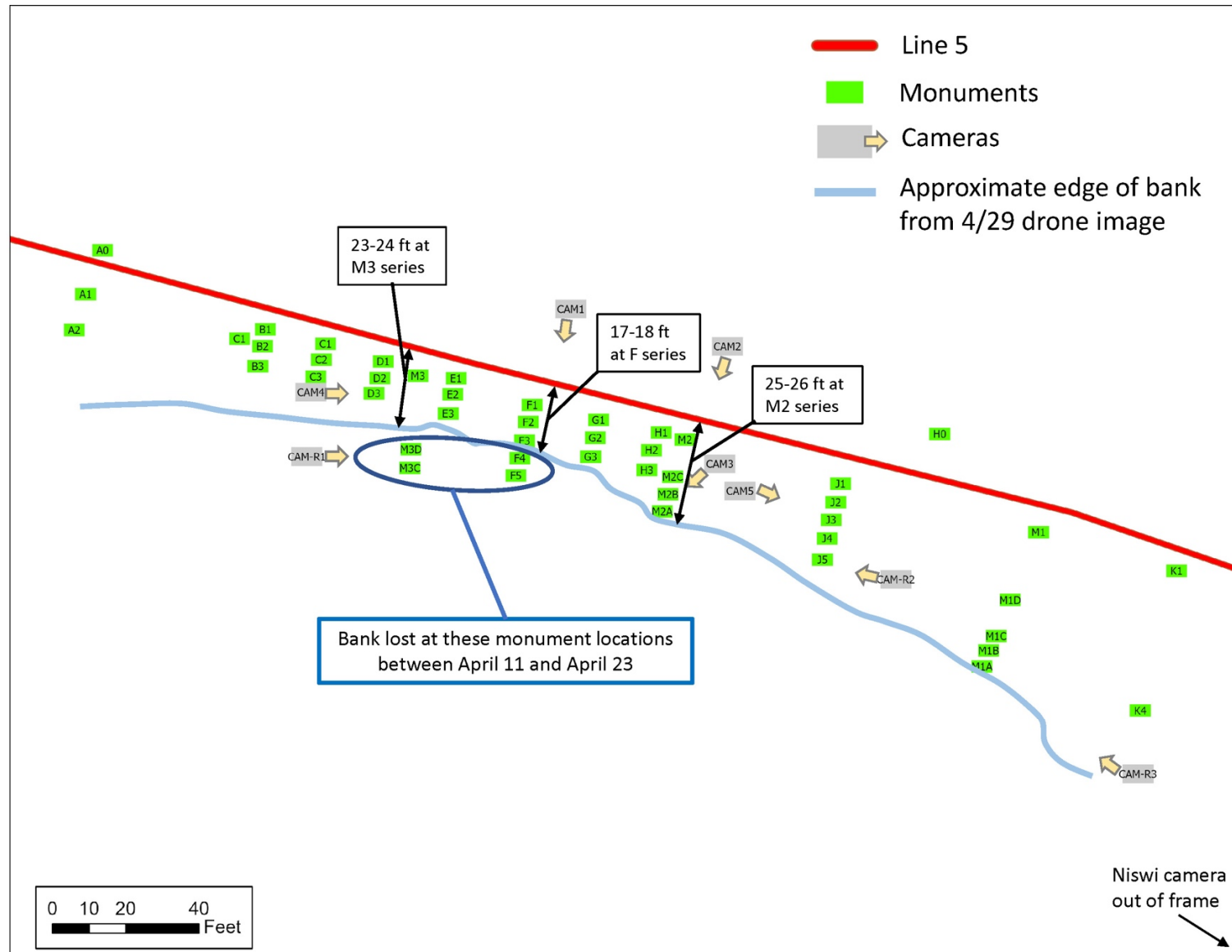
As described below there has been a loss of bank separating Line 5 from the Bad River in certain areas. At the time of trial, the pipeline was roughly 26.5 feet from the bank of the Bad River at the closest point. The shortest distance between the pipeline and the River is now roughly 17–18 feet.

Beginning Sunday, April 9, warm weather caused the snowpack in the Bad River watershed to melt, resulting in significant runoff. The river overtopped the neck of the Meander on Tuesday, April 11. The river rose steadily, reaching its maximum height on Thursday, April 13, with flows measured at 13,900 cubic feet per second (cfs), corresponding to approximately a 10-year event. On Sunday, April 16, a spring storm brought additional precipitation, contributing additional runoff.

The flood levels began to recede on Monday, April 17. With additional precipitation in the watershed on Thursday, April 20, and Friday, April 21, the flows in the Bad River again rose. On April 21 the Bad River again overtopped its banks, with river flows peaking at 10,400 cfs, reflecting less than a 5-year event. The flood waters receded below the top of the bank at the Meander two days later, on the morning of Sunday, April 23.

Between April 11 and April 23, the Bad River was out of its banks at the Meander for a total of 9 days. When the River was out of its banks, or when flood waters were receding, some monuments marking the distance between Line 5 and the Bad River fell due to erosion of the underlying soils, while others were knocked over by floating debris even though the bank/earth underneath remained in place. A schematic that depicts the monuments and the locations of the lost or knocked over monuments is below at **Figure 2**.

Figure 2. Map of Lost Monitoring Monuments at the Bad River Meander

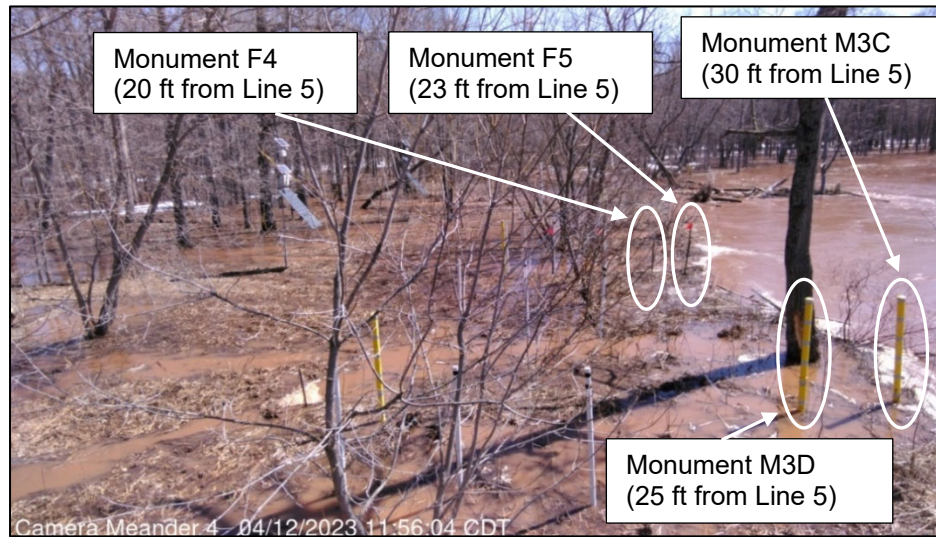


The Band has reported that one of its tree-fixed cameras monitoring the river and the monuments was lost during the flooding. While Enbridge has access to the imagery from the Band's cameras, imagery from this camera is not used by Enbridge as part of its monitoring efforts in accordance with its Plan, and is monitored only by the Band. Enbridge's cameras are in place and functioned as intended during this high flow event.

The Bad River waters have now receded. During the past two weeks, approximately 10 feet of bank has been lost at the M3 series of monuments, 1–2 feet at the M2 series, 8 feet at the F series, and no bank loss was observed at the J series. There has also been bank loss at the E and D series, but the Parties have not yet quantified the precise footage of bank loss along the E and D series but the Parties agree the bank in those locations is farther away from the pipeline than the bank at the F series monuments, as discussed immediately below. *See Figure 3.* The exact conditions at each monument series will be confirmed once an in-person joint site visit occurs.

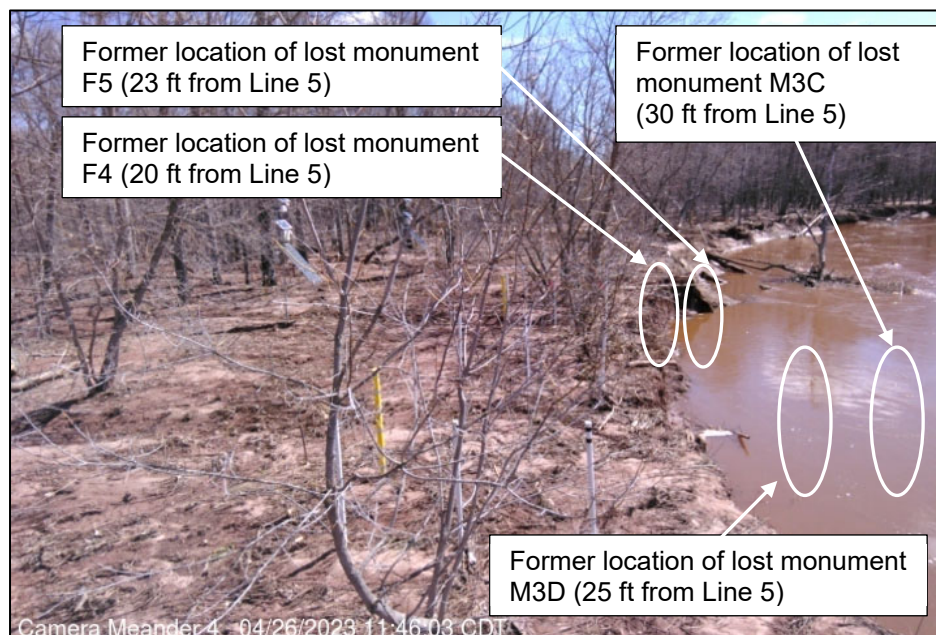
Figure 3. Ground-Level Camera Images Showing Meander Neck Bank Erosion and Lost Monuments from April 12, 2023, to April 26, 2023 (View East).

April 12, 2023:



(Photo source: Enbridge Camera 4, taken 4/12/23 at 11:56 CDT. Annotations added by Ian Paton.)

April 26, 2023:

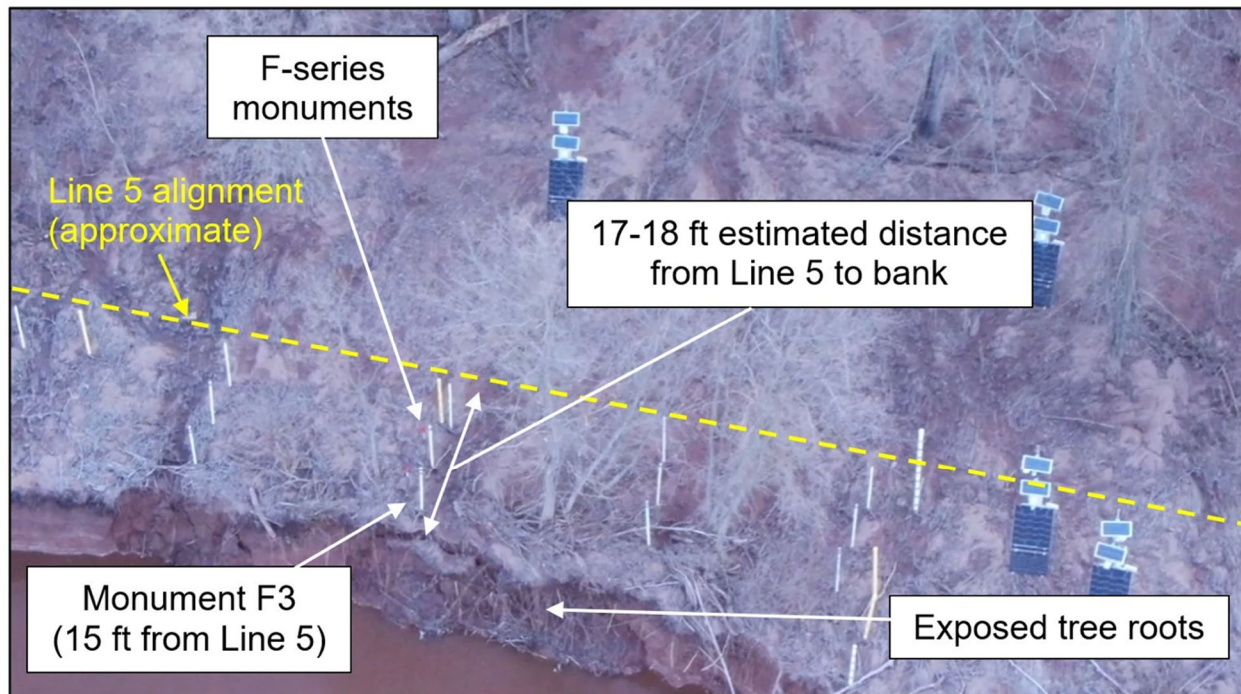


(Photo source: Enbridge Camera 4, taken 4/26/23 at 11:46 CDT. Annotations added by Ian Paton.)

The pipeline is closest to the edge of the riverbank at the F series of monuments, where the remaining distance now stands at approximately 17–18 feet. On February 8 of this year,

Enbridge and the Band had measured the distance between the pipe and the bank at that location at approximately 25 feet, meaning that approximately 7.5 feet of bank has been lost at that location in the intervening time period. *See* **Figure 4**. Additional sloughing of the bank is possible depending on a variety of factors. *See id.*

Figure 4. Aerial Image of Meander Neck, April 26, 2023 (View North).



(Photo source: Screenshot from drone video collected by Band contractor on 4/26/23. [“bad River 4 26 23 Flight 1.m4v”, time 05:44]. Annotations added by Ian Paton.)

Throughout the high-flow events, the Parties have been and remain in close communication, sharing imagery, forecasts, and interpretations of the data at least daily. The Parties are coordinating a joint in-person field visit to occur as soon as safe and feasible in order to further assess the conditions at the Meander and to inspect and, as necessary, re-affix monitoring equipment to the riverbank. The Parties expect that this visit will occur within the next two weeks.

The Parties are continuing discussion of the issues raised in the Court's order of November 28, 2022 (Dkt. 612), as referenced in the Parties' Joint Status Report of December 23, 2022 (Dkt. 614).

If at any time the Court has any questions about the significance or materiality of the information presented in this joint status report, the Parties are available at the Court's convenience and would appreciate the opportunity to respond to, address, and/or present legal argument regarding any such questions.

Dated: May 01, 2023

Respectfully submitted,

/s/ Riyaz A. Kanji

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CERTIFICATE OF SERVICE

I certify that on May 01, 2023, this document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

/s/ Riyaz A. Kanji
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